Supreme Court, U.S.
FILED
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No. 011694

In The

Supreme Court of the United States

ROGER V. S. CAMP,

Petitioner,

v.

BRANCH BANKING & TRUST COMPANY OF VIRGINIA,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

Petition for Writ of Certiorari

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QUESTION PRESENTED

The Uniform Commercial Code § 5-106(b) states that "after a letter of credit is issued, rights and obligations of a beneficiary, applicant, confirmer, and issuer are not affected by an amendment or cancellation to which that person has not consented . . . ." The question presented is whether the court of appeals properly ruled that a guarantor is liable under the terms of an irrevocable letter of credit that is amended without the consent of the applicant.

PARTIES TO THE PROCEEDINGS

Roger V.S. Camp,

Petitioner,

Branch Banking and Trust Corporation of Virginia.

Respondent .

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PETITION FOR A WRIT OF CERTIORARI

Roger V.S. Camp ("Camp") respectfully requests that this Court issue a writ of certiorari to review the judgment entered in this case by the United States Court of Appeals for the Fourth Circuit.

OPINIONS BELOW

The opinion of the court of appeals on the merits is reported at 2002 WL 46366 (January 14, 2002), and is reproduced in App. 4 . The order of the United States District Court for the Eastern District of Virginia, case number CA-00-501-2, is unreported and reproduced in App. 11. The decision of the court of appeals denying the petition for rehearing with petition for rehearing *en banc* is unreported and is reproduced in App. 1.

JURISDICTION

The opinion of the United States Court of Appeals for the Fourth Circuit was issued on January 14, 2002. A timely petition for rehearing with petition for rehearing *en banc* was denied by that court on February 14, 2002. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

This case involves Uniform Commercial Code § 5-106(b). UCC § 5-106(b) reads that after a letter of credit is issued, the rights and obligations of a beneficiary, applicant, confirmer, and issuer are not affected by an amendment or cancellation to which that person has not consented except to the extent the letter of credit provides that it is revocable or that the issuer may amend or cancel the letter of credit without that consent.

STATEMENT OF THE CASE

This case arises from Camp's guaranty to BB&T to pay the debts of Midwest Markets L.L.C. ("Midwest Markets"). BB&T alleges that Camp is liable for the debts, obligations and liabilities of Midwest Markets made by him pursuant to a Guaranty Agreement (the "Guaranty"). The Guaranty was signed by Camp pursuant to his request for an irrevocable standby letter of credit (the "Letter of Credit") on behalf of Midwest Markets for the benefit of Roundy's Inc. Ohio Division, a/k/a Scot Lad-Lima, Inc. ("Roundy's"). The Guaranty Agreements which were acknowledged by Camp on April 18, 200 and on May 1, 2000 guaranteed Midwest Markets' obligations to BB&T under the Letter of Credit. The Guaranty

> unconditionally guarantees to Bank and its successors and assigns the due and punctual payment of any and all notes, drafts, debts, obligations and liabilities, primary or secondary (whether by way of endorsement or otherwise) of Borrower, at any time, now or hereafter, incurred with or held by Bank, together with interest , as and when the same become due and savable, whether by acceleration or otherwise, in accordance with the terms of any such notes, drafts, debts, obligations or liabilities or agreements evidencing any such indebtedness, obligation or liability including all renewals, extensions and modifications thereof

The Letter of Credit first issued by BB&T to Roundy's on or about April 17, 2000 was scheduled to expire on May 1, 2000. This expiration date was extended, by agreement of the parties, and a new Application, Standing Letter of Credit, and Guaranty Agreement were

prepared and executed. The new Letter of Credit was scheduled to expire on May 12, 2000. On May 12, 2000, Camp asked BB&T to prepare, but not send, documents needed to extend the Letter of Credit until he further advised BB&T. On May 12, 2000, the Letter of Credit expired under the terms of the extension. On May 18, 2000, BB&T unilaterally extended the expiration date to June 15, 2000. Neal Crawford, a Senior Vice President of BB&T, failed to have Midwest Markets complete and sign a new Application and Agreement for Standing Letter of Credit. The extension of the expiration date of the Letter of Credit was made by a letter from Mr. Crawford to Roundy's dated May 17, 2000 and sent to Roundy's by facsimile. A copy of this extension was not sent to either Midwest Markets or Camp. After Roundy's received the extension of the Letter of Credit sent to them by facsimile on May 18, 2000, they resumed shipment of groceries to Midwest Markets almost immediately.

A. UNIFORM COMMERCIAL CODE § 5-106(B)

The Uniform Commercial Code § 5-106(b) states that once an irrevocable letter of credit is issued the rights and obligations of a beneficiary, applicant, confirmer, and issuer are not affected by an amendment or cancellation to which that person has not consented except to the extent the letter of credit provides that it is revocable or that the issuer may amend or cancel the letter of credit without that consent. Every state and the District of Colombia has enacted a statute which mirrors § 5-106(b).

When the original Article 5 was drafted 40 years ago, it was written for paper transactions and before many innovations in letters of credit. Now electronic and other media are used extensively. Since the 1950's, standby letters of credit have developed and now nearly $500 billion standby letters of credit are issued annually worldwide, of which $250 billion are issued in the United States. UNIFORM

COMMERCIAL CODE PREC. § 5-101, Refs & Annos (1995). The use of deferred payment letters of credit has also greatly increased. The customs and practices for letters of credit have evolved and are reflected in the Uniform Customs and Practice for Documentary Credits (UCP). The current version of the UCP became effective in 1994 (UCP 500) and is usually incorporated into letters of credit, particularly international letters of credit. Id. The UCP is the internationally recognized codification of rules unifying banking practice regarding documentary credits. Id.

Article 9 of the UCP provides that an irrevocable Letter of Credit can neither be amended nor canceled "without the agreement of the Issuing Bank, the Confirming Bank, if any, and the Beneficiary." See UCP Art. 9 (1993); id. Art. 2. The apparent omission of the applicant suggests that the consent of the applicant is not required. This interpretation, however, fails to take into account the definition of Letters of Credit in Article 2 of the UCP. Under the definition of this term, the Issuing Bank must be "acting at the request and on the instructions of a customer (the 'Applicant') . . . ." Because of this definition, there was no need in Article 9 to obtain the consent of the applicant since, under Article 2, the Issuing Bank may act only at the request and on the instructions of a customer. UCP Art. 2. Accordingly, it is clear that the UCC and UCP are in agreement that the terms of a Letter of Credit may not be amended without the consent of the applicant.

Letters of Credit are a major instrument in international trade, as well as domestic transactions. To facilitate its usefulness and competitiveness, it is essential that U.S. law be in harmony with international rules and practices, as well as flexible enough to accommodate changes in technology and practices that have, and are, evolving. Not only should the rules be consistent within the United States, but they need to be substantively and procedurally consistent with international practices. Id.

The Fourth Circuit's decision in this case would destroy the rules that have been adopted by the 50 states and the District of Columbia with regard to the amendment of letters of credit. As the use of letters of credit become more widespread, it is necessary for this Court to decide if an erroneous ruling by one circuit should stand in light of uniform legislation enacted by all 50 states and the District of Columbia. The question presented is whether the court of appeals properly ruled that the Guaranty was not limited to indebtedness incurred in connection to the Letter of Credit, but rather encompassed all debts incurred by debtor.

B. THE PROCEEDINGS BELOW

Respondent, BB&T, headquartered in Winston-Salem, N.C., is a fast growing, highly profitable financial holding company with $75.7 billion in assets. Its bank subsidiaries operate more than 1,100 branch offices in the Carolinas, Virginia, West Virginia, Kentucky, Georgia, Maryland, Tennessee, Alabama, Indiana and Washington, D.C. On or about April 17, 2000 Midwest Markets applied to BB&T for an irrevocable standby letter of credit in favor of Roundy's, a wholesale supplier of grocery products to Midwest Markets. As a condition to obtaining the Letter of Credit, Midwest Markets executed a Promissory Note (the "Note") dated April 17, 2000, in the original principal amount of $200,000, payable to BB&T. As an additional requirement to obtaining the Letter of Credit, Camp executed the Guaranty dated April 17, 2000 and acknowledged April 18, 2000. The dispute arose on or about May 12, 2000 when the Respondent mistakenly and unilaterally attempted to extend the already expired Letter of Credit.

On July 7, 2000 the Respondent sued the Petitioner, alleging that the Petitioner was liable on the Guaranty for the debts, obligations, and liabilities of Midwest Markets made by him pursuant to the Guaranty. The Parties

consented to trial by a Magistrate Judge, and the Honorable United States Magistrate Judge Tommy E. Miller conducted a bench trial on February 13, 2001. On February 28, 2001, Judge Miller entered judgment in favor of Camp. The district court ruled that Camp was not liable to BB&T under the Guaranty made by Camp on behalf of Midwest Markets.

BB&T filed its Notice of Appeal on March 5, 2001. On its appeal to the Fourth Circuit, BB&T urged that Camp, though the Guaranty entered in on behalf of Midwest Markets, was indebted to BB&T in four separate and distinct ways. On December 4, 2001, a three judge panel of the Fourth Circuit (the "panel") heard oral arguments in this case. On January 12, 2002, the panel reversed the decision of Judge Miller and remanded the case for further proceedings not inconsistent with their opinion. The panel held that the Guaranty essentially stated that Camp guarantees to BB&T all debts of Midwest Markets held by BB&T.

However, nowhere in its opinion did the panel address the clear language of the Guaranty itself. Instead, the panel proceeded to address the idea that Guaranty was unlimited and thus, Camp and Midwest Markets were indebted to BB&T by virtue of the assignment of the invoices to BB&T from Roundy's. The question raised here is whether a guarantor is liable under the terms of a letter of credit that is amended without the consent of the applicant.

REASONS FOR GRANTING THE WRIT

I. THE QUESTION PRESENTED IS IMPORTANT

First, the question presented is of substantive legal significance under the UCC, UCP, and the laws of all 50 states and the District of Columbia. All these texts require the consent of the applicant in order to extend a letter of credit or honor documents presented after the expiration date of such document. UCC § 5-106(b) states that "after a letter of credit is issued, rights and obligations of a beneficiary, applicant, confirmer, and issuer are not affected

by an amendment or cancellation to which that person has not consented . . . ." See UCC § 5-106(b) (2000). Next, Article 9 of the UCP explains that an irrevocable Letter of Credit can neither be amended nor canceled "without the agreement of the Issuing Bank, the Confirming Bank, if any, and the Beneficiary," with Article 2 including the applicant's consent in the process through its language acknowledging that the Issuing Bank must be "acting at the request and on the instructions of a customer (the 'Applicant') . . . ." See UCP Art. 9 (1993); id. Art. 2. Furthermore, all 50 states and the District of Colombia have adopted as law the language contained in UCC § 5-106(b). For example, Virginia Code § 8.5A-106(b) echos the UCC providing that the "rights and obligations of a beneficiary, applicant, confirmer, and issuer are not affected by an amendment or cancellation to which that person has not consented . . . ." The official comment to this section provides that:

> [A]n issuer might agree to amend its letter of credit or honor documents presented after the expiration date in the belief that the applicant has consented or will consent to the amendment or will waive presentation after the original expiration date. If that belief is mistaken, the issuer is bound to the beneficiary by the terms of the letter of credit as amended or waived, even though it may be unable to recover from the applicant.

See VA. CODE ANN. § 8.5A-106(b) UCC cmt. 2. Accordingly, it is clear that the UCC, UCP, and the laws of all 50 states and the District of Colombia are in agreement that the terms of a Letter of Credit may not be amended without the consent of the applicant. If the Fourth Circuit's opinion is allowed to stand, then the long standing rule that the terms

of a Letter of Credit may not be amended without the consent of the applicant will be materially altered.

II. THE DECISION OF THE COURT OF APPEALS IS ERRONEOUS

The panel's opinion that reversed the district court's decision is in error. The fundamental flaw in the panel's decision is its failure to adequately and justly interpret the plain meaning of the Guaranty made by Camp on behalf of Midwest Markets. The panel held that the Guaranty essentially stated that Camp guarantees to BB&T all debts of Midwest Markets held by BB&T. However, clearly and unequivocally the Guaranty itself states in plain language that Camp guarantees the debts of Midwest Markets only "in accordance with the terms of any such notes, drafts, debts, obligations or liabilities or agreements evidencing any such indebtedness . . . ." Camp's guaranty to BB&T that he would pay any and all debts and obligations of Midwest Markets, including any assignment of invoices to BB&T from Roundy's, was expressly subject to the terms of any such debts and obligations. Because the Letter of Credit issued by BB&T on behalf of Midwest Markets had expired, by its own terms, on May 12, 2000, and because BB&T could not unilaterally revive or extend an expired Letter of Credit, the debt created when Roundy's resumed shipments on May 18, 2000 was not one that arose under the Letter of Credit or "in accordance with the terms of any such notes, drafts, debts, obligations, or liabilities or agreements evidencing any such indebtedness obligation or liability . . . ." Even Mr. Crawford, BB&T's Senior Vice President and account manager for this transaction, admitted he had no written documentation indicating that Midwest wanted to extend the Letter of Credit, that he had made a mistake in sending an extension of the Letter of Credit without having Midwest Markets sign another Application, and that his standard practice was to have such documentation before

extending credit. Therefore, Camp has no obligation under the Guaranty Agreement for any of the assignments the Panel and BB&T claims Midwest Markets is indebted to BB&T, as none are supported by any agreement between Midwest Markets and BB&T. Camp is not liable under the Guaranty Agreement to pay BB&T for its mistake in unilaterally attempting to extend the already expired Letter of Credit.

Additionally, the panel summarily reversed the decision of the district court based on the idea that Camp and Midwest Markets were indebted to BB&T by virtue of the assignment of the invoices. However, the assignment of invoices would have never been created had BB&T not unilaterally and mistakenly extended the Letter of Credit to Roundy's on behalf of Midwest Markets. Roundy's would not have continued to ship merchandise to Midwest Markets had they not received assurance from BB&T that the Letter of Credit was extended. Mr. Crawford even admits that he made a mistake and would have preferred to revoke the extension of the Letter of Credit pursuant to Camp's request. Nevertheless, Mr. Crawford was not able to revoke the unilateral extension because after consultation with legal counsel, he was instructed that he had to honor the Letter of Credit to Roundy's. Mr. Crawford admittedly made a mistake and was subsequently unable to correct the error he made. Regardless, Camp bears no responsibility whatsoever for a mistake made by BB&T's employee and the liability created was in no way evidenced as a "note[s], draft[s], debt[s], obligation[s] or liability[s] or agreement[s] evidencing any such indebtedness, obligation or liability . . . " as called for in the terms of the Guaranty or such an obligation as contemplated by the parties thereto.

Certiorari jurisdiction is warranted to correct this error and clarify the law.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

FILED: February 14, 2002
ENTERED: February 14, 2002

No. 01-1312 CA-00-501-2

BRANCH BANKING & TRUST COMPANY,
Of Virginia,

Plaintiff-Appellant,

v.

ROGER V.S. CAMP,

Defendant-Appellee.

ON PETITION FOR REHEARING AND REHEARING *EN BANC*

The appellee's petition for rehearing and rehearing en banc was submitted to this Court as no member of this Court of the panel requested a poll on the petition for rehearing en banc, and

As the panel considered the petition for rehearing and is of the opinion that it should be denied.

IT IS ORDERED that the petition for rehearing and rehearing en banc is denied.

For the Court
/s/Patricia S. Connor
CLERK

JUDGMENT

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

FILED: January 14, 2002
ENTERED: January 14, 2002

No. 01-1312 CA-00-501-2

BRANCH BANKING & TRUST COMPANY,
Of Virginia,

Plaintiff-Appellant,

v.

ROGER V.S. CAMP,

Defendant-Appellee.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF VIRGINIA AT NORFOLK

In accordance with the written opinion of this Court filed this day, the Court reverses the judgment of the District Court. This case is remanded to the District Court for further proceedings consistent with the Court's opinion.

For the Court
/s/Patricia S. Connor
Clerk

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

FILED: February 22, 2002
ENTERED: February 22, 2002

No. 01-1312 CA-00-501-2

BRANCH BANKING & TRUST COMPANY,
Of Virginia,

Plaintiff-Appellant,

v.

ROGER V.S. CAMP,

Defendant-Appellee.

ORDER

The Appellant has filed a bill of costs.

The Court awards $1,185.40 in costs. An itemized statement of costs is attached to this order. A certified copy of this order shall issue to the Clerk of the District Court for inclusion in this Court's mandate.

For the Court - By Direction

/s/Patricia S. Connor
Clerk

UNPUBLISHED
UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

BRANCH BANKING & TRUST COMPANY, Of Virginia,
Plaintiff-Appellant,

v. No. 01-1312

ROGER V.S. CAMP,
Defendant-Appellee.

Appeal from the United States District Court
for the Eastern District of Virginia, at Norfolk.
Tommy E. Miller, Magistrate Judge.
(CA-00-501-2)

Argued: December 6, 2001
Decided: January 14, 2002
Entered: January 14, 2002

Before LUTTIG, KING, and GREGORY, Circuit Judges.

Reversed by unpublished per curiam opinion.

COUNSEL

ARGUED: Robert L. O'Donnell, VANDEVENTER BLACK, L.L.P., Norfolk, Virginia, for Appellant. Michael Bruce Ware, JONES, BLECHMAN, WOLTZ & KELLY, P.C., Newport News, Virginia, for Appellee. **ON BRIEF:** Richard H. Ottinger, VANDEVENTER BLACK, L.L.P., Norfolk, Virginia, for Appellant. Bryan H. Schempf, JONES, BLECHMAN, WOLTZ & KELLY, P.C., Newport News, Virginia, for Appellee.

Unpublished opinions are not binding precedent in this circuit. See Local Rule 36(c).

OPINION

PER CURIAM:

This case involves appellee Roger Camp's guaranty to appellant Branch Banking & Trust Company of Virginia (BB&T) to pay the debts of Midwest Markets. Because the court below erred in its interpretation of the guaranty, we reverse.

I

On April 17, 2000, Midwest Markets applied to BB&T for an irrevocable standby letter of credit in favor of Roundy's, a wholesale supplier of grocery products to Midwest Markets. The purpose of the letter of credit was to induce Roundy's to sell grocery products to Midwest Markets. The credit was limited to an amount not to exceed $200,000. Pursuant to the terms of the letter of credit, if Midwest Markets failed to pay for goods within ten days of the issuance of an invoice, Roundy's would then be able to draw on the letter of credit to pay the overdue invoices.

As a condition to obtaining the letter of credit, Midwest Markets executed a promissory note dated April 17, 2000, in the original principal amount of $200,000, payable to BB&T. As an additional requirement to obtaining the letter of credit, Roger Camp, who holds a majority interest in Midwest Markets, executed a guaranty agreement dated April 17, 2000 and acknowledged April 18, 2000. The guaranty stated, in pertinent part:

> As an inducement to [BB&T] to extend credit to and to otherwise deal with [Midwest Markets], and in consideration thereof, the undersigned . . . hereby absolutely and unconditionally guarantees to Bank and its successors and assigns the due and punctual payment of any and all notes, drafts, debts, obligations and liabilities, primary or secondary (whether by way of endorsement or otherwise), of Borrower, at any time, now or hereafter, incurred with or held by Bank, together with interest, as and when the same become due and payable, whether by acceleration or otherwise, in accordance with the terms of any such notes, drafts, debts, obligations or liabilities or agreements evidencing any such indebtedness, obligation or liability including all renewals, extensions and modifications thereof.

The guaranty provided Camp three options to define the limits on his liability. The form provided that Camp would simply indicate his choice by marking an "X" in the box next to the option selected. The first option provided that liability under the guaranty would be unlimited and applied to all indebtedness of Midwest Markets. The second option provided that the guaranty would be limited to indebtedness evidenced by a specific promissory note. The third option provided that the guaranty would be limited to a specific dollar amount. The initial guaranty signed by Camp had the first option marked. Later, the third option was checked, and the guaranty was modified to limit his liability to $200,000. At no time was the second option marked.

On April 17, 2000, BB&T issued the letter of credit to Roundy's with an original expiration date of May 1, 2000. Prior to May 1, 2000, Midwest Markets, through Camp, requested an extension of the letter of credit from May 1 to May 12, 2000.

At this point the parties' narration of events diverges. On May 12, Camp asked BB&T to prepare the documents necessary for a further extension of the letter of credit. According to Camp, his request was limited to preparing the documents for the extension; he asserts he never actually requested the extension. According to BB&T, Camp made an actual oral request for the letter of credit to be extended until June 15, 2000 and, on May 18, BB&T extended the letter of credit via a letter faxed from E. Neal Crawford, Senior Vice President of BB&T, to Roundy's. Roundy's resumed shipment of goods to Mid-west Markets.

On May 23, 2000, Roundy's demanded payment from BB&T on the letter of credit for payment of overdue and unpaid invoices to Midwest Markets in the amount of $122,030.84. On May 25, BB&T honored Roundy's demand for payment on the letter of credit, and BB&T paid Roundy's the full amount demanded. In conjunction with that payment, BB&T took an assignment of the Roundy's invoices that were unpaid by Midwest Markets. Midwest Markets refused to repay BB&T. Camp refused to honor the guaranty.

On June 2, 2000, Midwest Markets filed for bankruptcy protection. On July 7, 2000, BB&T filed suit in the Eastern District of Virginia. The parties consented to a bench trial before the Magistrate. On February 9, 2001, four days before the start of trial, the U.S. Bankruptcy Court for the Northern District of Indiana entered an Order Allowing Claim in the amount of $122,030.84. The order was endorsed as "agreed" by bankruptcy counsel for Midwest Markets.

BB&T asserted at trial that it was entitled to judgment against Camp in the principal amount of $122,030.84, plus interest, costs and attorneys' fees on the

ground that Camp unconditionally guaranteed "all notes, drafts, debts, obligations and liabilities" of Midwest Markets. At trial, the magistrate judge excluded the bankruptcy order because it was produced, in his view, too close to the beginning of trial and because he found it was not relevant to Camp's guaranty.

In an opinion delivered from the bench, the magistrate judge found for Camp. The magistrate judge held that the guaranty was limited to debts incurred pursuant to the letter of credit, and further found that the letter of credit expired on May 12, 2000. The magistrate judge found that he did not need to decide the disputed issue of whether Camp's oral statements to BB&T were an actual request for an extension or merely a request for the preparation of appropriate documents. Instead, he ruled that any extension of the letter of credit was required to have been in writing. Accordingly, the magistrate judge found Camp not liable to BB&T under the guaranty.

II

We review questions of law de novo. *West v. Murphy*, 99 F.3d 166, 167 (4th Cir. 1996).

Underlying a large portion of BB&T's appeal is its assertion that the magistrate judge erred when he ruled that the guaranty is limited to debts incurred pursuant to the letter of credit. BB&T is correct. The magistrate judge erred in his interpretation of the guaranty because the guaranty was unlimited. The guaranty covered all "notes, drafts, debts, obligations and liabilities . . . . of [Midwest Markets], at any time, now or hereafter, incurred with or held by [BB&T] . . .." The form of the guaranty had a mechanism for limiting its coverage to a specific instrument, viz., the check box, but the parties agree that the mechanism was not employed in this case. Accordingly, the guaranty was unconditional,

covering all debts of Midwest Markets to BB&T, with the sole limitation that the total amount guaranteed cannot exceed $200,000.

BB&T argues that Camp is liable under the guaranty because Mid-west Markets is indebted to BB&T in four distinct ways: (1) the bankruptcy order; (2) the invoices assigned to BB&T from Roundy's; (3) the letter of credit; and (4) the subrogation of Roundy's rights against Midwest Markets. Because Midwest Markets was indebted to BB&T by virtue of the assignment of the invoices, we need not consider the other three theories.

The testimony and evidence at trial unequivocally revealed that Roundy's assigned Midwest Markets' unpaid invoices to BB&T. These invoices represented a debt of Midwest Markets to Roundy's, incurred by the purchase of goods from Roundy's. The writing evidencing the assignment was introduced at trial. (JA 21.) And Mr. Crawford testified that BB&T took an assignment of the invoices. (JA 72-73.) The assignment transferred to BB&T Roundy's rights to payment from Midwest Markets. *See* Va. Code §8.2-210(2) (establishing general validity of assignment of rights of buyer and seller); Restatement (Second) of Contracts §317(2) (1979) (generally providing for assignment of contractual rights); *id.* § 317, illus. 1. The evidence went unrebutted at trial. Even now, on appeal, Camp does not dispute the validity of the assignment. The assignment of the invoices created a debt of Midwest Markets held by BB&T. We find that the guaranty, which clearly states that Camp guarantees to BB&T all debts of Midwest Markets held by BB&T, was broad enough to cover the assigned debt.

Accordingly, the judgment below is reversed, and the case is remanded for further proceedings not inconsistent with this opinion.

REVERSED

UNITED STATES DISTRICT COURT

Eastern District of Virginia
Norfolk Division

FILED: February 28, 2001
ENTERED: February 28, 2001

CASE NUMBER: 2:00cv501

JUDGMENT IN A CIVIL CASE

BRANCH BANKING & TRUST COMPANY,
Of Virginia,

Plaintiff(s),

v.

ROGER V.S. CAMP,

Defendant(s).

[ ] Jury Verdict. This action came before the Court for a trial by jury. The issues have been tried and the jury has rendered its verdict.

[X] Decision by Court. This action came to trial or hearing before the Court. The issues have been tried or heard and a decision has been rendered.

IT IS ORDERED AND ADJUDGED that the plaintiff take nothing, that the action be dismissed on the merits, and that the defendant, Roger V.S. Camp, recover of the plaintiff, Branch Banking and Trust Company of Virginia, his costs of action.

Norman H. Meyer, Jr., Clerk
Deputy Clerk

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Norfolk Division

FILED: February 28, 2001
ENTERED: February 28, 2001

BRANCH BANKING & TRUST COMPANY,
Of Virginia,

Plaintiff(s),

v. **ACTION NO. 2:00cv501**

ROGER V.S. CAMP,

Defendant(s).

ORDER

On February 28, 2001, the Court heard closing arguments in the trial in this matter. Representing the plaintiff was Robert L. O'Connell, Esq. Representing the defendant was Michael E. Ware, Esq. The contract court-reporter was Horace Weiss of Zahn, Hall & Zahn, Ltd.

The Court orally made findings of fact and conclusions of law. For the reasons stated on the record, the Court found for the defendant and DIRECTS the Clerk to enter judgment for the defendant. The defendant may take his costs.

The plaintiff requested that the Court note plaintiff's exception to this ruling.

The Clerk shall mail a copy of this Order to all counsel or record.

/s/Tommy Miller
United States Magistrate Judge

Norfolk, Virginia
February 28, 2001

(2)

No. 01-1694

JUN 18 2002

CLERK

IN THE

Supreme Court of the United States

ROGER V.S. CAMP,

Petitioner,

v.

BRANCH BANKING & TRUST COMPANY OF VIRGINIA,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF IN OPPOSITION

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QUESTION PRESENTED

Was the Fourth Circuit correct in holding that Petitioner was obligated to repay to Respondent, under the clear and unambiguous terms of the guaranty, the debts, obligations and liabilities as evidenced in at least four separate and distinct ways?

STATEMENT PURSUANT TO RULE 29.6

Respondent, Branch Banking & Trust Company of Virginia, is a wholly owned subsidiary of Branch Banking & Trust Corporation, a publicly held corporation.

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REASONS FOR DENYING THE WRIT

The Petitioner mischaracterizes the findings of the United States Court of Appeals for the Fourth Circuit ("Fourth Circuit"). The sole question presented by the Petitioner is whether a guarantor is liable under the terms of an irrevocable letter of credit that is amended without the consent of the applicant. (Petition for Certiorari ("Pet.") at i.) The Fourth Circuit, however, held that the guaranty obligated the Petitioner to repay the debts, obligations and liabilities of Midwest Markets which he guaranteed, without finding a need to address the letter of credit. (Pet. at 8.) According to Petitioner, "[i]f the Fourth Circuit's opinion is allowed to stand, then the long standing rule that the terms of a Letter of Credit may not be amended without the consent of the applicant will be materially altered." (Pet. at 7-8.) The material alteration of the "UCC, UCP, and the laws of all 50 states and the District of Columbia" (Pet. at 6) posited by the Petitioner does not follow from the Fourth Circuit's opinion.

The Fourth Circuit's ruling does not raise the question presented by the Petitioner. It is not in conflict with any other Circuit and thus has no far-reaching implications beyond the two parties in this matter. Furthermore, the Fourth Circuit's ruling was proper in all respects and Respondent respectfully urges this Honorable Court to deny the Petition for Writ of Certiorari.

I.

THE QUESTION PRESENTED BY THE PETITIONER MISREPRESENTS THE DECISION BELOW

Simply stated, the Petitioner misstates the Fourth Circuit's decision, which did not consider his question presented. The Petitioner blatantly misrepresents the Fourth Circuit's holding in an attempt to persuade this Court to address the matter. The case below involved one basic question: does the guaranty obligate the Petitioner to pay *all* debts, obligations and liabilities of Midwest Markets to the Respondent up to a total amount of $200,000, or is the guaranty limited to debts incurred under the letter of credit? The guaranty states in pertinent part:

> As an inducement to [BB&T] to extend credit to and otherwise deal with [Midwest Markets], and in consideration thereof, the undersigned . . . hereby *absolutely and unconditionally guarantees* to Bank and its successors and assigns the due and punctual payment of any and all notes, drafts, debts, obligations, and liabilities, primary or secondary (whether by way of endorsement of otherwise), of Borrower, at any time, now or hereafter, incurred with or held by Bank, together with interest, as and when the same shall become due and payable, . . . , in accordance with the terms of such notes, drafts, debts, obligations, or liabilities or agreements evidencing any such indebtedness, obligation or liability including all renewals, extensions and modifications thereof.

(Pet., App. at 6) (emphasis added.)

The guaranty provided the Petitioner with three options to limit the terms of the guaranty by making an "X" next to the option selected. The guaranty provided: (1) a choice of unlimited liability; (2) an option limited by the terms of a specific promissory note; or (3) an option limited by a dollar amount. The Petitioner ultimately chose to limit the guaranty by the third option, and placed a cap on his liability of $200,000. (Pet., App. at 6.)

Virginia law is well settled that when the meaning of the language employed in a document is clear, "the instrument must be given effect accordingly." *Virginia Ry Co. v. Avis*, 124 Va. 711, 716, 98 S.E. 638, 639 (1919). This is precisely what the Fourth Circuit did. It correctly held that the "guaranty . . . clearly states that Camp [personally] guarantees to BB&T all debts of Midwest Markets held by BB&T." (Pet., App. at 9.)

Respondent argued before both the trial court and the Fourth Circuit that the Petitioner was liable under the guaranty as evidenced in four distinct ways: (1) a bankruptcy "Order Allowing Claim" agreed to by Midwest's bankruptcy representative; (2) invoices assigned to Respondent from Roundy's; (3) the letter of credit; and (4) the subrogation of Roundy's rights against Midwest Markets. (Pet., App. at 9.)

The Petitioner's own bankruptcy counsel endorsed the "Order Allowing Claim" admitting to the debt just four days before commencement of the trial. (Pet., App. at 7.) As a result of honoring Roundy's demands for payment, the Respondent took an assignment of Roundy's unpaid invoices to Midwest Markets. Additional evidence of the debt arises from the subrogation of Respondent to Roundy's rights against Midwest Markets by virtue of Respondent's payments to Roundy's. (Pet., App. at 9.)

The Fourth Circuit chose to focus on Roundy's assignment of Midwest Markets' unpaid invoices to Respondent as evidence of this debt. (Pet., App. at 9.) It found that "testimony and evidence at trial unequivocally revealed that Roundy's assigned Midwest Markets' unpaid invoices to" the Respondent. (Pet., App. at 9.) The Petitioner never disputed the validity of the assignment at trial or before the Fourth Circuit (Pet., App. at 9); and cannot now claim that the assignment exists only as a result of mistake by the Respondent. (Pet. 9.)

The Fourth Circuit stated in no uncertain terms that "[b]ecause Midwest Markets was indebted to BB&T by virtue of the assignment of the invoices, *we need not consider the other three.*" (Pet., App. at 9) (emphasis added). The letter of credit issue is but one of the four ways way in which the debt is evidenced; a finding that the letter of credit was not properly extended will not change the outcome of this case.

In its question presented, the Petitioner focuses on the proper means by which a letter of credit may be extended under § 5-106(b) of the U.C.C. (Pet. at i.) The Petitioner states that the U.C.C. mandates that "after a letter of credit is issued, rights and obligations of a beneficiary, applicant, confirmer, and issuer are not affected by an amendment or cancellation to which that person has not consented." U.C.C. § 5-106(b) (1995). The Respondent does not contest that statement, but it is irrelevant in determining the outcome of this case. Even assuming *arguendo* that the letter of credit executed by Midwest Markets was not properly extended, the Fourth Circuit would have ruled exactly the same way. By the plain language of the guaranty, the Petitioner remained *personally obligated* to the Respondent via the Respondent's rights acquired under the assignment. The Petitioner's choice

to highlight § 5-106 of the U.C.C. when the Fourth Circuit found it irrelevant is nothing more than an attempt by the Petitioner to exaggerate the significance of that court's holding in order to cause this Court to revisit an issue which in reality is nothing more than a straightforward interpretation of a guaranty contract. The Fourth Circuit's holding was proper in all respects and does not call for review by this Court.

II.

THE FOURTH CIRCUIT'S RULING DOES NOT CONFLICT WITH THE EXISTING U.C.C. OR U.C.P., NOR DOES IT PRESENT A CONFLICT AMONG THE CIRCUITS

The Petitioner's contention that the Fourth Circuit's ruling is at odds with other Circuits is without merit. The basis of the Petitioner's claim is grounded in an interpretation of U.C.C. § 5-106(b). Its question presented is unimportant because there is no dispute that Uniform Commercial Code ("U.C.C") § 5-106(b) states what Petitioner says it does. Petitioner's argument is unfounded because although the Petitioner is of the opinion that § 5-106(b) is "of substantive legal significance" (Pet. at 6) to the outcome of this case, the Fourth Circuit did not address the issue in reaching its decision. It is axiomatic that the Fourth Circuit's holding in this case cannot be in conflict with existing law when its decision did not turn on U.C.C. § 5-106. Not only does the Petitioner neglect to cite case or statutory law that contradicts the Fourth Circuit, the Petitioner fails to cite any case law at *all in* support of its position. The argument is merely a feeble attempt to create a legal issue worthy of further consideration. The purported conflict stated by the Petitioner simply does not exist, and additional review by this Court is unnecessary.

CONCLUSION

For all of the foregoing reasons, Respondent respectfully requests that this Honorable Court deny the Petition.

Respectfully submitted,

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